

January 11, 2008

*Via Electronic Delivery*

Catherine Seidel, Chief  
Consumer & Governmental Affairs Bureau  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: Written *Ex Parte* Notice, *Telecommunications Relay Services and  
Speech-to-Speech Services for Individuals with Hearing and Speech  
Disabilities*  
CG Docket No. 03-123

Dear Ms. Seidel:

The undersigned companies are concerned that the language in paragraphs 95 and 96 of the Commission's November 19, 2007 Declaratory Ruling in the above-captioned docket is overly broad, is inconsistent with the First Amendment (*e.g.*, it prohibits telecommunications relay service (TRS) providers from contacting TRS users to inform them about pending FCC issues that may interest them or for "any other purpose"), and may lead to adverse unintended consequences. We support the Commission's goals of protecting user privacy and preventing the use of improper financial and similar incentives to stimulate TRS demand, and propose the following alternative language that we believe meets those goals.

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**Proposed Replacement for Paragraphs 95-96 in the  
November 19, 2007 Declaratory Ruling (FCC 07-186)**

95. Finally, in addition to avoiding practices that generate additional calls that can be billed to the Fund,<sup>1</sup> providers must safeguard the confidentiality of TRS user information gathered through the provision of TRS. Permitting unfettered access to such information "would violate the reasonable privacy expectations of the TRS user."<sup>2</sup> Accordingly, TRS providers may not share, distribute, reveal, sell, or otherwise use user-specific information gathered through the provision of TRS calls, except for lawful purposes for which the average user would reasonably expect such data to be used. Such purposes include, for example, handling TRS calls; assisting TRS users by providing technical support or information about product or service updates and enhancements; responding to a user's call for emergency services or assisting in the delivery of

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<sup>1</sup> As noted above, a provider may not use TRS user information in ways that would violate the prohibition on financial incentives. See *2005 TRS Marketing Practices PN* at 3.

<sup>2</sup> *2000 TRS Order*, 15 FCC Rcd at 5175, ¶ 83.

emergency services to a user; disclosing user information to any person designated by the user; consistent with applicable law, protecting the rights or property of the TRS provider or protecting TRS users from fraudulent, abusive, or unlawful use of TRS; and complying with a federal statute, an FCC rule or order, a court order, or other lawful authority.

96. In sum, because the obligation placed on TRS providers is to be available to handle calls consumers choose to make, when they choose to make them, *i.e.*, to be the “dial tone” for a consumer that uses relay to call to a voice telephone user, and because consumers do not pay for this service but rather providers are compensated pursuant to Title IV of the ADA, providers may not offer relay users financial and similar incentives, directly or indirectly, to use their service. Likewise, they may not use user-specific consumer or call data in furtherance of an incentive scheme barred by paragraphs 89-94 of this Declaratory Ruling or by previous FCC decisions, or in ways that would violate the reasonable privacy expectations of TRS users. Thus, a provider may not use call data to monitor TRS use by its users (or users of other providers) in order to condition further receipt of benefits on making a sufficient number of calls. Because, as suggested above, we recognize that incentive programs can be structured in limitless ways, we will continue to carefully monitor the provision of service and equipment in this regard. Providers offering such programs or otherwise taking action that has the effect of providing consumers incentives to make relay calls, or misusing user information, will be subject to the full range of the Commission’s enforcement authority.

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This letter is being submitted for inclusion in the public record of the above-referenced proceeding.

Respectfully submitted,

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